

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT M. DUKOWITZ,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Case No. C08-5142 BHS/KLS

ORDER TO AMEND PETITION

This habeas corpus petition has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. (Dkt. # 5).

The Court notes that Petitioner has failed to name the correct Respondent, thereby depriving this Court of personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). 28 U.S.C. § 2243 requires that writs are to be directed “to the person having custody of the person detained.” The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person having a day-to-day control over the prisoner. That person is the only one who can produce ‘the

body' of the petitioner." *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

Therefore, Petitioner's custodian for purposes of his habeas corpus petition challenging the execution of his Washington state sentence, is the warden of the prison where he is currently confined. *See, e.g., Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

In addition, because Petitioner is a Washington state prisoner housed in an out-of-state facility, he should name the Washington Attorney General as a respondent.

Accordingly, it is **ORDERED**:

- (1) Petitioner shall amend his petition to name his immediate custodian and warden and the Washington Attorney General as Respondents **on or before May 2, 2008**. For purposes of this amendment, it is sufficient for Petitioner to amend the first page of his petition only. To assist Petitioner, the Clerk of the Court is directed to mail Petitioner a 28 U.S.C. § 2254 Petition form; and
- (2) The Court Clerk is directed to send a copy of this Order to Petitioner and to note this matter for the Court's **May 2, 2008** calendar.

DATED this 15th day of April, 2008.


Karen L. Strombom
United States Magistrate Judge